

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A VARIANCE)
PERMIT GRANTED TO ROBERT F.)
HILL BY PACIFIC COUNTY and)
DENIED BY THE DEPARTMENT OF)
ECOLOGY)
ROBERT F. HILL,)
Appellant,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY and)
PACIFIC COUNTY,)
Respondents.)

SHB No. 77-38

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the disapproval by the
Department of Ecology of a variance permit granted by Pacific
County, came before the Shorelines Hearings Board, Dave J. Mooney,
Chairman, Chris Smith, Robert F. Hintz and Robert E. Beaty, on
March 2, 1978 in Lacey, Washington. David Akana presided.
Appellant, Robert F. Hill, was represented by his attorney,

1 Kenneth O. Welling; respondent, Department of Ecology, was
2 represented by Robert V. Jensen, Assistant Attorney General;
3 respondent Pacific County did not appear.

4 Having heard the testimony, having examined the exhibits,
5 and having considered the contentions of the parties, the
6 Shorelines Hearings Board makes these

7 FINDINGS OF FACT

8 I

9 Lake Loomis is located on a peninsula of land in Pacific County
10 which is bordered on the east by Willapa Bay and on the west by the
11 Pacific Ocean. The shoreline of Lake Loomis, which is not a shoreline
12 of statewide significance, is largely undeveloped and shows woodland
13 and marsh characteristics. The 152-acre lake is relatively shallow and
14 is slowly being filled with vegetation. The lake is fished during 30
15 days of each year. A few water skiers and swimmers also use the lake
16 during the summers. Otherwise, waterfowl such as swans and geese have
17 the lake to themselves.

18 Public access to the lake is provided over a Department of Game
19 road and boat launch located on the west bank of the lake. The lake is
20 inaccessible over the public lands lying on the east bank of the lake
21 because of the boggy marshlands.

22 The waters of the lake are hydraulically connected to the ground-
23 water and standing water visible on the uplands. The fresh water
24 supply for the communities on the peninsula comes from ground water
25 which floats above the bordering salt water. From this basin of fresh
26 water comes drinking water, and into the system is returned effluent

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1 from septic systems. There is no known health problem from this state
2 of affairs, however.

3 II

4 On July 3, 1975 appellant acquired a 1900-foot long by 200-foot
5 wide parcel of land on the west shoreland of Loomis Lake. Portions
6 of the property near the shoreline had been filled with dredged
7 spoils about fifteen years ago. Because much of the property is
8 close to the water table, appellant decided to fill portions thereof
9 for an access road and for septic system requirements. Land lying
10 outside of the 200-foot shoreline jurisdiction is also available for
11 septic system purposes.

12 By spring of 1976, appellant placed approximately 1200 cubic
yards of landfill on the site, some of which lay within 100 feet of
4 the shoreline. Appellant thereafter applied for and received approval
5 to construct a septic tank system from the Grays Harbor-Pacific Health
District for the purpose of building a single family residence for
himself and his family thereon. A septic tank was placed 90 feet from
the lake; the septic drainfields were placed 105 feet back from the
lake. The septic system and fill, completed in August of 1976,
are valued at \$6,000. Appellant applied for a building permit for
a house and a storage shed, both of which would have been built within
100 feet of the shoreline of Loomis Lake. Appellant was told that
a shoreline substantial development permit and variance were required
for his home, storage shed, fill and septic system, and made
application therefor.

1 III

2 Pacific County granted a variance from the 100 foot setback
3 requirement of its master program for the storage shed. No permit was
4 thought to be necessary for the proposed single family dwelling. The
5 permit was forwarded to the respondent Department of Ecology who
6 disapproved the proposed variance and project on the grounds that it
7 did not meet the criteria for the granting of a variance under Section
8 26.19.03 of the Pacific County Shoreline Master Program and WAC
9 173-14-150. The disapproval resulted in the instant appeal before
10 this Board.

11 For purposes of this appeal, appellant has abandoned his
12 plans for a storage shed. The parties agreed that the permit herein
13 question is concerned only with the proposed location of the
14 single family residence 50 feet from the high water mark of Loomis
15 Lake.

16 IV

17 The adopted Pacific County Shoreline Master Program was
18 formally approved by respondent on August 8, 1975. The instant
19 site and lake are located in a conservancy environment designation
20 as described therein.

21 Section 3.70 provides for the minimizing of damage to the environ-
22 ment by conserving natural resources. The goal is applicable in
23 natural and conservancy environments and particularly as to marshes
24 and swamps therein.

25 Section 12.40.02 provides that single family residences are
26 permitted on shorelines in a conservancy designation subject to the

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1 following:

2

3 No residential structure shall be constructed closer
4 than 100 feet from the ordinary high water mark.

5 Section 17.62.04 provides that:

6

7 Filling to provide land for septic tank
8 drainfields shall be prohibited except
9 where alternative treatment methods or
locations cannot be utilized.
(See also Section 22.15).

10 Section 26.19.03 provides that:

11

12 Before any variance may be granted, it shall be shown:

- 3 (a) That because of special circumstances
4 pertaining to the property in question,
5 including size, shape, topography, location
6 and/or surroundings, the strict application
7 of this ordinance would deprive the property
8 in question of rights and privileges enjoyed
9 by other properties in the vicinity [sic]
and in the designated environment;
- 17 (b) That the hardship or deprivation would result
18 from applying the provisions of the Act and/or
19 of this ordinance and not from deed restrictions
or the property owner's own actions;
- 20 (c) That the granting of the variance will be
21 consistent with the policies and provisions
22 of the Act and the policies, regulations
and other provisions of this ordinance.
- 23 (d) That public welfare and interest will be
24 preserved.

24 V

25 Seven existing residences are located within 100 feet of the ordinary
6 high water mark of Lake Loomis. Five of these residences were

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1 constructed before the effective date of the shoreline master
2 program. Two of the residences appear to violate the 100-foot
3 setback. There are no residences closer than 100 feet of the
4 ordinary high water mark which are in the immediate vicinity of
5 appellant's property. The department has not approved any variances
6 relaxing the 100-foot setback provision of the master program as
7 it applies to Lake Loomis.

8 VI

9 There were four reasons for establishing a 100-foot setback
10 requirement for single family residences in a conservancy environment
11 designation: The Guidelines for a conservancy environment designation;
12 the Grays Harbor-Pacific Health District 100-foot setback for septic
13 system drainfields; aesthetic considerations to preserve the conservancy
14 characteristics; the remaining use of fifty percent of the area within
15 the 200-foot jurisdiction of the Shoreline Management Act (SMA) was
16 deemed reasonable. There are no specific references in the SMA requiring
17 a setback. The effect of a 100-foot setback is more consistent with
18 the conservancy environment than is a 50-foot setback.

19 VII

20 Any Conclusion of Law which may be deemed a Finding of Fact is
21 hereby adopted as such.

22 From these Findings, the Shorelines Hearings Board comes to these

23 CONCLUSIONS OF LAW

24 I

25 Appellant contends that no "permit" is necessary for the proposed
26 project because a single family dwelling is not a "substantial

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1 development." RCW 90.58.030(3)(e)(v1). We do not agree with such a
2 broad statement. We do agree that a project which is not a "substantial
3 development" does not require a substantial development permit.
4 RCW 90.58.140(2). Under certain circumstances, a single family dwelling
5 is not a substantial development and does not require a permit therefor.
6 However, a single family dwelling is nonetheless a "development" which is
7 subject to the policy of the SMA and the applicable master program.
8 RCW 90.58.140(1).¹ A development which does not meet the use regulations
9 of an applicable master program must be granted a "permit for a
10 conditional use or variance" before it can proceed. RCW 90.58.100(5).
11 Such permits are a part of the established permit system provided in
12 RCW 90.58.140(3). Id. If local government grants a permit for a
13 conditional use or variance, the permit must be submitted to the depart-
14 ment for its approval or disapproval. RCW 90.58.140(12). The denial by
15 the department of such a permit issued pursuant to RCW 90.58.140 may be
16 reviewed by this Board. RCW 90.58.180(1). Given the foregoing framework,
17 we conclude that appellant's position is not well taken and that a permit
18 for a variance from the Pacific County Master Program was and is required.
19 We thus adhere to our holding in Attorney General v. Grays Harbor et al.,
20 SHB Nos. 231 and 232 (Order on Motion for Summary Judgment). Further, we
21 conclude that the variance provisions apply where use regulations of a
22 master program are applicable. Whether a variance is required is not
23 dependent upon a distinction between "shorelines" and "shorelines of
24 statewide significance."

25
26 1. For example, the instant master program provides for a 100-foot
27 setback from the ordinary high water mark for all residences in a
conservancy environment. Section 12.40.02. See also RCW 90.58.030(3)(d).

1 II

2 There are no "special circumstances" peculiar to appellant's
3 property within the meaning of Section 26.19.03(a) of the Pacific
4 County Shoreline Master Program which would deprive the instant
5 property of rights and privileges enjoyed by other properties in the
6 vicinity and in the conservancy environment. Rather, appellant's
7 property is not significantly different from other properties and
8 should not be granted special rights or privileges not commonly
9 enjoyed by neighboring properties, i.e., a location closer to the
10 water than allowed to others.

11 III

12 We refer to our earlier interpretation of the Department of
13 Ecology regulation for variances, WAC 173-14-150, in Kooley v.
14 Department of Ecology, SHB No. 218, and Spencer v. Department of
15 Ecology, SHB No. 242. For appellant to prevail under the regulations,
16 he must prove that without the variance, he cannot make any reasonable
17 use of his property. WAC 173-14-150(1). If he cannot so prove, his
18 appeal must fail. If he can do so, he must also prove that the variance
19 meets the requirements of WAC 173-14-150(2), (3) and (4).

20 IV

21 Appellant has failed to prove that if he complies with the 100-
22 foot setback provision for a single family residence he cannot make
23 any reasonable use of his property. The respondent Department of
24 Ecology's action should therefore be affirmed.

25 V

26 Appellant also failed to prove that the contended hardship results

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1 from the application of the SMA and the master program.

2 WAC 173-14-150(2). (See also Section 26.19.03(6) of the master program.)

3 In particular, the landfill with a septic system was a substantial
4 development for which a permit appears necessary and for which none
5 was procured. If hardship results to appellant, it is of his own
6 making. Moreover, from the dimensions related by appellant it would
7 appear that construction of a residence may yet be possible 100 feet from
8 the lake and along the northern edge of the existing drainfield.

9 VI

10 The instant variance would not be in harmony with the general
11 purpose and intent of the master program. WAC 173-14-150(3). (See
12 also Section 26.19.03(c) of the master program.)

VII

14 If the instant variance were granted, a precedent allowing fill
15 and homesites within the 100-foot setback would be established on the
16 west bank of the lake. The cumulative effect of such construction
17 would render meaningless the master program provisions which attempt
18 to conserve the natural resources of the area. (See Section 3.70 of
19 the master program.) We conclude that the public welfare and interest
20 will not be preserved. WAC 173-14-150(4). (See also Section
21 26.19.03(d) of the master program.)

22 VIII

23 Appellant did not prove that the 100-foot setback requirement of
24 the master program was arbitrary and capricious. See Juanita Bay
25 Valley Community Association v. Kirkland, 9 Wn. App. 59 (1973).

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IX

The disapproval of the variance should be affirmed.

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Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Shorelines Hearings Board makes this

ORDER

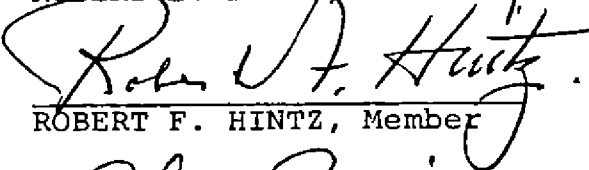
The disapproval of the variance is affirmed.


DATED this 22^d day of March, 1978.

SHORELINES HEARINGS BOARD


DAVE J. MOONEY, Chairman


ROBERT E. BEATY, Member


ROBERT F. HINTZ, Member


CHRIS SMITH, Member